

### **III. REMARKS**

1. Applicant points out that there has been a change of responsible attorney in this application. The prosecution of this application is now being handled by Ziegler IP Law Group, LLC, Customer No. 93582. A change of correspondence address and Power of Attorney is being filed herewith.

2. The Office Action dated 27 August 2010 has been carefully considered. Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and the following remarks.

#### **Status of the Claims**

3. Claims 1-36 have been cancelled without prejudice. Claims 37-60 are new. Claims 37-60 are now pending in the application.

#### **Claim Objections**

4. New claims 37-60 address the noted objections to the claims.

#### **Claim Rejections – 35 U.S.C. §101**

5. Claims 1-11 and 24-32 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

6. Claims 1-11 were rejected under 35 U.S.C. §101 for failing to recite a specific apparatus in carrying out the method steps. New claim 37, which corresponds to cancelled claim 1, recites a “measurement device” and a “memory of the measurement device.” Therefore, it is submitted that the claims are now directed to statutory subject matter.

7. Claims 24-32 were rejected for being directed to non-statutory subject matter. These claims have been cancelled.

#### **Claim Rejections – 35 U.S.C. §102**

8. Claims 1-36 were rejected under 35 U.S.C. §102 (e) as being anticipated by Stubbs et al. (US 2004/0260191)(hereinafter “Stubbs”).

Applicant respectfully submits that claims 37-60 are not anticipated by Stubbs because Stubbs does not disclose or suggest at least the limitations of comparing a previously recorded activity to an ongoing activity using a measurement device; comparing, during an ongoing activity, the previously recorded measurement data in the memory to current measurement data measured with the measurement device; providing a user of the measurement device with a feedback in response to the comparison or “indicating how much the user of the measurement device has been fallen below compared to the previously recorded measurement data of the virtual friend on said route” as is recited in Applicant’s claims. In order for a reference to anticipate a claim pursuant to 35 U.S.C. §102, each and every element of the claim must be expressly recited in the reference. As noted above, Stubbs does not disclose each and every limitation recited in Applicant’s claims..

Stubbs is directed to a monitoring system for monitoring physical activities of a user, and in particular, an exercise monitoring system. Stubbs makes real time measurements of exercise activity and provides real time data and feedback. In paragraph [0148] Stubbs notes that a user can set certain limits related to exercise goals. If there is a deviation from these limits, the user can be provided with certain types of feedback indicating that they have deviated from these set points or goals. However, providing feedback that a user has deviated from a setpoint is not the same as comparing a previously recorded activity to an ongoing activity using a measurement device, comparing, during an ongoing activity, the previously recorded measurement data in the memory to current measurement data measured with the measurement device, providing a user of the measurement device with a feedback in response to the comparison or indicating how much the user of the measurement device has been fallen below compared to previously recorded measurement data of the virtual friend on said route as is recited in Applicant’s claims.

In paragraphs [0073-0075] Stubbs discloses comparing a subject’s physical fitness to their physical fitness on a previous occasion by: (a) measuring their blood oxygen level while they perform a physical activity “at a predetermined workload, velocity or pace;” and (b) measuring the blood oxygen level on a subsequent occasion while they perform a physical activity, “preferably at the same predetermined workload, velocity or pace.” However, all that is disclosed here is the comparison of a current “fitness level” to a previous “fitness level.” This is not the same as comparing a previously recorded activity to an ongoing activity using a measurement device, comparing, during an ongoing activity, the previously

recorded measurement data in the memory to current measurement data measured with the measurement device, providing a user of the measurement device with a feedback in response to the comparison or indicating how much the user of the measurement device has been fallen below compared to the previously recorded measurement data of the virtual friend on said route. A “fitness level” is not the same as an “activity”, as described and claimed by Applicant. Stubbs merely compares a current blood oxygen level, which is a “sign” of fitness, to a prior blood oxygen level. However, in Applicant’s claimed subject matter, a previously recorded “activity” is compared to an ongoing “activity”, and feedback is provided to the user to indicated “how much” the user has “fallen below” or behind the previously recorded measurement data of the virtual friend “on said route.”

Additionally, the disclosed comparison of fitness levels of Stubbs in paragraphs [0073] – [0075] only teaches the comparison of blood oxygen levels between activities. There is no mention in the disclosure of Stubbs of the comparison of other factors such as, for example, altitude, velocity or pace at a given point on a route, as claimed by Applicant. Stubbs does mention the use of a GPS or electronic positioning device “in order to provide real time data concerning at least one of the subject’s location, altitude, heading, velocity, pace and distance traveled, and may optionally provide a precise time measurement.” ([0078]) However, Stubbs et al. does not anywhere disclose or teach the comparison of any of these factors during ongoing activity with previous activity performed on a particular route, as claimed by Applicant in claim 37.

Thus, it is submitted that Stubbs does not disclose each and every limitation recited by Applicant in claim 37.

In view of the foregoing, Applicant respectfully submits that claim 37 is not anticipated by Stubbs.

Claims 38-48 are also patentable, at least by reason of their dependency to claim 37.

8. Applicant respectfully submits that claim 49 is also not anticipated by Stubbs. Claim 49 contains the feature, “indicating how much the user of the measurement device has been fallen below compared with the previously recorded measurement data of the virtual friend on said route,” which, for the reasons stated above, is not taught by Stubbs. Further, Stubbs does not disclose the comparison of measurement data on a particular route, as claimed by Applicant and also discussed above.

Thus, it is submitted that Stubbs does not disclose each and every limitation recited by Applicant in claim 49.

In view of the foregoing, Applicant respectfully submits that claim 49 not anticipated by Stubbs.

Claims 50-60 are also patentable at least by reason of their dependencies to claim 49.

Therefore, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below as well as by electronic mail, authorization for which is provided below.

Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail at the email address listed below. I understand that a copy of these communications will be made of record in the application file.

The Commissioner is hereby authorized to charge any necessary fees or credit any overpayment associated with this submission to Deposit Account No. 50-5215.

Respectfully submitted,

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Date

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